

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION

DAVID BURNS

Civil Case #

KIM BURNS

Plaintiff

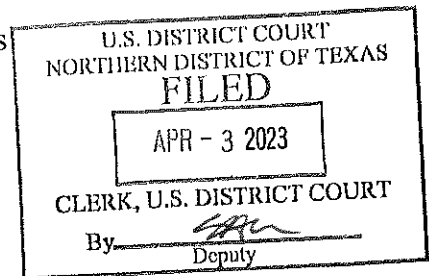
V.

4:23CV-333-P

SAIBABA ARLINGTON HOSPITALITY LLC doing business as
HOLIDAY INN EXPRESS ARLINGTON SOUTH

NORMA GUTIERREZ, CORPORATELY AND IN
HER PERSONAL CAPACITY

Defendant



COMPLAINT FOR DAMAGES

COMES NOW, DAVID BURNS and KIM BURNS, as the Plaintiffs

who files this Original Complaint for Damages against,

SAIBABA ARLINGTON HOSPITALITY LLC doing business as
HOLIDAY INN EXPRESS ARLINGTON SOUTH and
NORMA GUTIERREZ, CORPORATELY AND IN HER PERSONAL CAPACITY
as Defendants and shows this Court the following:

Statement of Subject Matter Jurisdiction

Plaintiff, **DAVID BURNS**, and **KIM BURNS** are of full age and majority domiciled in Osceola Florida. Plaintiffs allege acts of fraud, conspiracy, and defamation per se among other Whereby the plaintiff suffered irreparable harm

Defendant, HOLIDAY INN EXPRESS ARLINGTON SOUTH is a fictitious name used by Defendant, SAIBABA ARLINGTON HOSPITALITY LLC incorporated in the State of Texas.

Furthermore, SAIBABA ARLINGTON HOSPITALITY LLC is at all times relevant herein the parent company of the HOLIDAY INN EXPRESS ARLINGTON SOUTH made

defendant herein and assumed all the liabilities, debts, and obligations of the Holiday Inn Express Arlington South.

Defendant NORMA GUTIERREZ is the General Manager of the Property and acted in her official capacity and as Plaintiff will show, took actions out of the scope of normal business practices and guidance herein the case for personal liability.

Defendants own and operate a property known as the Holiday Inn Express and Suites located at 1721 Pleasant Place, Arlington, Texas 76015.

Plaintiffs reserve the right to amend this complaint to add additional defendants and or counts.

Federal Jurisdiction and Venue

1. SAIBABA ARLINGTON HOSPITALITY LLC doing business as HOLIDAY INN EXPRESS ARLINGTON SOUTH and NORMA GUTIERREZ, CORPORATELY and IN HER CAPACITY and are subject to the personal jurisdiction of this Court as said defendant corporation is registered to do business and is doing business in the State of Texas, and may be served as follows: Through its Agent for Service of Process: Registered Office Street Address at 7417 HIDDEN COVE LANE FRISCO, TX 75034 is subject to the personal jurisdiction of this Court as said defendant corporation is registered to do business and are doing business in the State of Texas, and may be served as follows: Through its corporate officer: Manager on duty Holiday Inn Express at 1721 Pleasant Place, Arlington, Texas 76015.

2. The venue is properly in the United States District Court for the Northern District of Texas because the venue lies in the judicial district of the property situs. The Defendants property is located in the Northern District of Texas and the Defendant conducts business within this judicial District

3. This Court has original jurisdiction in this action. This Court has been given original jurisdiction over actions involving diversity. This case The plaintiff(s) and defendant(s) are from

different states and the amount in controversy is at least \$75,000. 28 U.S. Code § 1332 - Diversity of citizenship

COUNT 1 FRAUD

Plaintiffs allege intentional fraud committed by the Plaintiffs,

**SAIBABA ARLINGTON HOSPITALITY LLC doing business as
HOLIDAY INN EXPRESS ARLINGTON SOUTH and NORMA GUTIERREZ,
CORPORATELY AND IN HER PERSONAL CAPACITY**

4. Plaintiff has been a guest stay at the defendant's property since on or about February 3, 2023.
5. The Plaintiffs were occupants of the hotel on March 10, 2023, and decided to extend their stay for \ and rebook for the night of March 11, 2023. On or about March 11, 2023, at 10:00 Plaintiff Kim Burns went to the desk clerk to arrange for an additional night. At approximately 10:04 AM, Plaintiff DAVID BURNS Chime Bank Debit Card authorized a \$ 174.33 payment to cover the night of March 11, 2023, with the check out on March 12, 2023. Plaintiff Kim Burns signed and executed a new Agreement.
6. Around 11:15 PM, March 11, 2023, the plaintiff received a call from the front desk indicating an alleged problem with the authorization.
7. Upon arriving at the front desk, defendants agents later joined by defendant Gutierrez insisted that no authorization was taken and they had no record of the transaction. Defendant Gutierrez became irate and abusive. Despite offering proof of payment, Gutierrez decided to call the police, and forcibly remove and trespass the defendants despite being offered proof of the payment and the family having paid for the night.
8. The plaintiffs contend that the defendant's actions deprived them of the money use to pay for the March 11, 2023 stay and acted without due regard for ejecting them and having them criminally Trespassed for non-payment when the plaintiff had proof that a payment was taken.
9. The elements of fraud in Texas are (1) the defendant made a representation to the plaintiff; (2) the

representation was material; (3) the representation was false; (4) when the defendant made the representation the defendant knew it was false or made the representation recklessly and without knowledge of its truth. Defendant GUTIERREZ had full knowledge that the payment was authorized for the March 11- 12, 2023 stay.

COUNT II

Civil Conspiracy - Vicarious Liability

10. Plaintiff will show that the Defendants and various staff members conspired to deprive the Plaintiff of their hotel room for the night, monies paid for the night, forcibly eject them after midnight on a Saturday night when all area hotels were booked full and then have them criminally trespassed for no valid reason.

11. Plaintiffs were thrown out in the Cold with three children and a service animal at 1:00 AM on a Sunday Morning when all available hotels/ motel rooms in the vicinity were booked. Defendants had full knowledge of the lack of available rooms.

12. In Texas There are five elements required to prove a civil conspiracy: **1)** a combination of two or more persons; **2)** the persons seek to accomplish an object or course of action; **3)** the persons reach a meeting of the minds on the object or course of action; **4)** one or more unlawful, overt acts are taken in pursuance of the object or course of action; and **5)** damages occur as a proximate result. *Tri v. J.T.T.*, 162 S.W.3d 552, 556 (Tex. 2005) Plaintiffs will prove that two or more hotel employees acted in concert with Defendant GUTIERREZ who was aware of the intended harm or proposed wrongful conduct at the the outset of the combination or agreement. *Firestone Steel Prods. Co. v. Barajas*, 927 S.W.2d 608, 614 (Tex. 1996); see also, *Schlumberger Well Surveying Corp. v. Nortex Oil & Gas Corp.*, 435 S.W.2d 854, 857 (Tex. 1968)

COUNT III

The Hotel Occupancy Tax “Permanent Resident” Exemption

13. Plaintiff further alleges that the defendants violated the Hotel Occupancy Tax “Permanent Resident” Exemption by continually charging tax while aware that the plaintiff has been staying at the property over thirty days without interruption.

14. The Texas Tax Code states that any “person” who has the right to use or possess a lodging room for at least 30 consecutive days are exempt from state and local hotel occupancy taxes, provided there is no interruption in payment for the room during this period. The Plaintiff's stay was over thirty days without any interruption. Defendants were advised that the plaintiffs were going to stay more than thirty days.

COUNT IV
DEFAMATION PER SE

15. The plaintiffs allege that the defendants defamed them by making materially false statements to the Arlington Police Officers responded to the incident.

16. Under Texas law Defamation per se entails a party making statements that the average citizen would conclude will damage another party's reputation. This could include accusations of criminal activity, shady business dealings, cheating on his/her spouse, or even things such as prejudice and discrimination in regard to race, age, sex, or disability. The defendant's statement that the Plaintiffs did not pay and then refused to pay were not true and were designed to injure and harm the plaintiffs reputation. Defendant's verbal statements to the Police and heard by others accused the plaintiffs of refusing to pay for the stay and would be inclusive of the specific statutory language, namely the accusation of criminal activity.

17. Texas defines defamation per se as words that “are so obviously harmful to the person aggrieved, that no proof of their injurious effect is necessary to make them actionable. Texas considers four types of statements so injurious, that the defamation plaintiff need not prove they suffered harm, such statements include: Statements imputing the plaintiff committed a crime

Plaintiffs DAVID BURNS and KIM BURNS are entitled to an amount in damages reasonably calculated to compensate them for the events of March 11, 2023, including but not limited to;

- a. Past, present, and future mental pain, suffering, and anguish;
- b. Compensatory damages

- c. Punitive damages
- d. Any and all other damages cognizable by the Constitution of the State of Texas and the United States Constitution.

WHEREFORE, Plaintiffs DAVID BURNS and KIM BURNS and minor children and
Pray that t h e Defendants,

SAIBABA ARLINGTON HOSPITALITY LLC doing business as
HOLIDAY INN EXPRESS ARLINGTON SOUTH

NORMA GUTIERREZ, CORPORATELY AND IN
HER PERSONAL CAPACITY

be duly cited and served with a copy of this Original Complaint for Damages, made to appear and
answer same, and that after all legal delays and due proceedings had, there be judgment herein in
favor of your Plaintiffs, DAVID BURNS and KIM BURNS,
against:

**Defendants, SAIBABA ARLINGTON HOSPITALITY LLC doing business as
HOLIDAY INN EXPRESS ARLINGTON SOUTH**

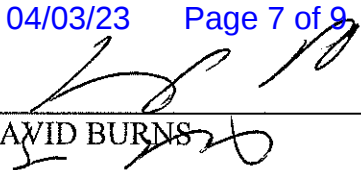
**NORMA GUTIERREZ, CORPORATELY AND IN
HER PERSONAL CAPACITY**

for damages over \$ 76,000.00 a reasonable amount together with pre-judgment legal interest
thereon from the date of filing of this action, for all costs of these proceedings, including expert
witness fees and reasonable attorney's fees, and for all general and equitable relief as this
Honorable Court may deem proper and just.

Dated: 3/09/2023

Respectfully submitted,

DAVID BURNS
KIM BURNS
Pro Se Plaintiffs



DAVID BURNS

KIM BURNS
1431 SIMPSON ROAD
SUITE 84
KISSIMMEE, FLORIDA 34744
david@davidburns.com
david.burns.legal.com
Tel: (202) 868-9535

Service Information:

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DAVID BURNS, KIM BURNS

(b) County of Residence of First Listed Plaintiff osceola
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DAVID BURNS AS PRO SE, 1431 SIMPSON RD, SUITE 84
KISSIMMEE, FLORIDA (202) 868-9535

DEFENDANTS

SAIBABA ARLINGTON HOSPITALITY LLC doing business as
HOLIDAY INN EXPRESS ARLINGTON SOUTH

County of Residence of First Listed Defendant TARRANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

APR - 3 2023

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box Only)

- (For Diversity Cases Only)
- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S. Code § 1332 - Diversity of citizenship

Brief description of cause:

Fraud, DEFAMATION PER SE, Civil Conspiracy - Vicarious Liability

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/29/2023

SIGNATURE OF ATTORNEY OF RECORD

K-B As pro se

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

D Burns

Case 4:23-cv-00383-P

Document 1

Filed 04/03/23

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